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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,845	12/09/2003	Arnold H. Bramnick	BOC9-2003-0040 (410)	5227

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EXAMINER	
LIOU, ERIC	

ART UNIT	PAPER NUMBER
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/730,845	BRAMNICK ET AL.	
	Examiner	Art Unit	
	Eric Liou	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. Applicant has amended claims 1-2, 8-9, and 15. Claims 1-15 remain pending and are presented for examination.

Response to Arguments

2. Applicant submits Slivka fails to expressly or inherently teach weighing the costs of hotel and meals for a passenger who wishes to wait for another flight on the same airline and the step of comparing such accommodation costs with the cost of re-booking the passenger on a flight offered by a different airline. More specifically, Applicant asserts Slivka does not teach offering accommodations to the passenger if the accommodation cost is less than the re-booking cost and offering a plurality of alternative re-booking flights to a passenger only if the re-booking cost is less than the accommodation cost. The Examiner notes, a new reference has been brought into the rejection to disclose the above-mentioned limitations. See art rejection below.

3. In response to applicant's argument that Slivka fails to show certain features of Applicant's invention, it is noted that the feature upon which Applicant relies (i.e., offering to a passenger whose flight has been cancelled multiple different re-booking flights.) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Objections

4. Claims 1, 8, and 15 are objected to because of grammatical informalities. Appropriate correction is required.

5. Claims 1, 8, and 15 recite the limitation, "wherein said passenger data comprises a passenger re-booking cost that includes the cost to an airline which has cancelled a flight of offering to re-book said passenger on an alternative flight offered by a different airline." The phrase ...of offering to re-book said passenger on an alternative flight offered by a different airline" appears to be another limitation that should be recited in a separate sentence.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slivka et al., U.S. Publication No. 2003/0225600 in view of Ingram, "Travellers Leave for Portugal after 24-hour Wait for Plane", The Globe and Mail (Canada), June 26, 1986, pg. A21.

8. As per claims 1 and 8, Slivka discloses a method and a machine readable storage for re-booking passengers from cancelled flights, comprising the steps of:

obtaining passenger data for said passenger (Slivka: Figure 1, "120"; paragraph 0033; paragraph 0034, "passenger information may be obtained"), wherein said passenger data comprises a passenger re-booking cost that includes the cost to an airline which has cancelled a

flight of offering to re-book said passenger on an alternative flight offered by a different airline (Slivka: paragraphs 0014; 0015, "provider cost of moving passengers to a different airline");

comparing said passenger data for said passenger with at least one rule (Slivka: Figure 1; paragraph 0024, "Rules engine 113 may be a set of instructions, that when executed by a processor (e.g., CPU 104) perform a process that determines values associated passengers based on one or more travel rules."); and

offering a plurality of alternative re-booking flights to said passenger based upon said comparing step (Slivka: Figure 1; Figure 2, "235"; Figure 3; paragraph 0045).

9. Slivka does not disclose determining an accommodation cost, including hotel and meal charges, of accommodating the passenger until another flight offered by the airlines is available, if the accommodation cost is less than the re-booking cost offering an accommodation to said passenger, and if the re-booking cost is less than the accommodation cost, offering to re-book flights.

10. Ingram discloses determining an accommodation cost, including hotel and meal charges, of accommodating the passenger until another flight offered by the airlines is available (Ingram: paragraph 0003), if the accommodation cost is less than the re-booking cost offering an accommodation to said passenger (Ingram: paragraph 0003 – The Examiner notes, the phrase "We've really tried to do the best we could for them" implies that the airline will decide to offer an accommodation to a passenger if the accommodation cost is less than the re-booking cost. One skilled in the art would recognize that it is basic business practice to select the alternative that best suits the business financially, i.e. select the most cost effective alternative. The applied reference has been interpreted and applied assuming basic knowledge of one of ordinary skill

in the art. According to *In re Jacoby,* 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode,* 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that, which is disclosed therein.), if the re-booking cost is less than the accommodation cost, offering to re-book flights (Ingram: paragraph 0009 – The Examiner notes, the phrase "We've really tried to do the best we could for them" implies that the airline will offer to re-book a flight if the re-booking cost is less than the accommodation cost. One skilled in the art would recognize that it is basic business practice to select the alternative that best suits the business financially, i.e. select the most cost effective alternative. The applied reference has been interpreted and applied assuming basic knowledge of one of ordinary skill in the art. See *In re Jacoby,* 135 USPQ 317 (CCPA 1962) and *In re Bode,* 193 USPQ 12 (CCPA 1977).).

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and machine readable storage of Slivka to have included determining an accommodation cost, including hotel and meal charges, of accommodating the passenger until another flight offered by the airlines is available, if the accommodation cost is less than the re-booking cost offering an accommodation to said passenger, and if the re-booking cost is less than the accommodation cost, offering to re-book flights as disclosed by Ingram for the advantage of accommodating passengers in a way that provides customer satisfaction while serving the business well financially.

12. As per claims 2 and 9, Slivka in view of Ingram discloses the method and machine readable storage of claims 1 and 8. Slivka further discloses the said passenger data for said

passenger comprises remaining unflown ticket value and a passenger lifetime value (Slivka: paragraphs 0033-0035).

13. As per claims 3 and 10, Slivka in view of Ingram discloses the method and machine readable storage of claims 2 and 9. Slivka further discloses the said passenger lifetime value comprises at least one of the frequent flyer status of the passenger and the ticket purchase history of the passenger (Slivka: paragraph 0035).

14. As per claims 4 and 11, Slivka in view of Ingram discloses the method and machine readable storage of claims 1 and 8. Slivka further discloses the said passenger data is provided real time (Slivka: paragraph 0034, "...the passenger information may be obtained from the departure control system, which is the computer system used at the gate before check-in." The Examiner interprets the departure control system as providing passenger data in real time.).

15. As per claims 5 and 12, Slivka in view of Ingram discloses the method and machine readable storage of claims 1 and 8. Slivka further discloses the said re-booking flights are determined from flight inventory data and reservation data (Slivka: paragraph 0032, "Operations database 118"; paragraph 0036, "...re-accommodation driver 111 may retrieve from operations database 118 seat availability information associated with each flight included in the flight schedule information." The Examiner interprets seat availability information to be flight inventory data and reservation data.).

16. As per claims 6 and 13, Slivka in view of Ingram discloses the method and machine readable storage of claims 1 and 8. Slivka further discloses the said passenger data is obtained from at least one selected from the group consisting of accounting data, customer relationship management data, and loyalty data (Slivka: paragraph 0035, see passenger database 120).

17. As per claims 7 and 14, Slivka in view of Ingram discloses the method and machine readable storage of claims 6 and 13. Slivka further discloses a value score for said passenger is obtained using said passenger data (Slivka: paragraph 0037, "re-accommodation driver 111 may determine a PNR value"), and said re-booking flights are offered to said passenger based upon said passenger value score (Slivka: paragraphs 0044; 0045).

18. As per claim 15, Slivka in view of Ingram discloses the limitations of the claim for the same reasoning as described in claims 1 and 8 above.

Double Patenting

19. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

20. Claims 1 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 13 of copending Application No. 10/730,851 in view of Slivka et al., U.S. Publication No. 2003/0225600 and further in view of

Ingram, "Travellers Leave for Portugal after 24-hour Wait for Plane", The Globe and Mail (Canada), June 26, 1986, pg. A21. Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

21. As per claims 1 and 8, the instant application is anticipated by claims 1 and 13 of Application No. 10/730,851 in that claims 1 and 13 of 10/730,851 disclose a method and machine readable medium for re-booking passengers comprising the steps of: obtaining passenger data for said passenger; comparing the passenger data with one or more rebooking rules; and rebooking said passenger.

22. Claims 1 and 8 of 10/730,851 do not disclose said passenger data comprises a passenger re-booking cost that includes the cost to an airline which has cancelled a flight of offering to re-book said passenger on an alternative flight offered by a different airline; determining an accommodation cost, including hotel and meal charges, of accommodating the passenger until another flight offered by the airlines is available, if the accommodation cost is less than the re-booking cost offering an accommodation to said passenger, and if the re-booking cost is less than the accommodation cost, offering a plurality of alternative re-booking flights to said passenger based upon said comparing step.

23. Slivka discloses said passenger data comprises a passenger re-booking cost that includes the cost to an airline which has cancelled a flight of offering to re-book said passenger on an alternative flight offered by a different airline (Slivka: paragraphs 0014; 0015, "provider cost of moving passengers to a different airline") and offering a plurality of alternative re-booking

flights to said passenger based upon said comparing step (Slivka: Figure 1; Figure 2, "235"; Figure 3; paragraph 0045).

24. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and machine readable storage of claims 1 and 8 of 10/730,851 to have included said passenger data comprises a passenger re-booking cost that includes the cost to an airline which has cancelled a flight of offering to re-book said passenger on an alternative flight offered by a different airline and offering a plurality of alternative re-booking flights to said passenger based upon said comparing step as disclosed by Slivka for the advantage of improving customer satisfaction by accommodating passengers in the event of a disrupted flight.

25. Application 10/730,851 in view of Slivka does not disclose determining an accommodation cost, including hotel and meal charges, of accommodating the passenger until another flight offered by the airlines is available, if the accommodation cost is less than the re-booking cost offering an accommodation to said passenger, and if the re-booking cost is less than the accommodation cost, offering to re-book flights.

26. Ingram discloses determining an accommodation cost, including hotel and meal charges, of accommodating the passenger until another flight offered by the airlines is available (Ingram: paragraph 0003), if the accommodation cost is less than the re-booking cost offering an accommodation to said passenger (Ingram: paragraph 0003 – The Examiner notes, the phrase "We've really tried to do the best we could for them" implies that the airline will decide to offer an accommodation to a passenger if the accommodation cost is less than the re-booking cost. One skilled in the art would recognize that it is basic business practice to select the alternative

that best suits the business financially, i.e. select the most cost effective alternative. The applied reference has been interpreted and applied assuming basic knowledge of one of ordinary skill in the art. According to *In re Jacoby,* 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode,* 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that, which is disclosed therein.), if the re-booking cost is less than the accommodation cost, offering to re-book flights (Ingram: paragraph 0009 – The Examiner notes, the phrase "We've really tried to do the best we could for them" implies that the airline will offer to re-book a flight if the re-booking cost is less than the accommodation cost. One skilled in the art would recognize that it is basic business practice to select the alternative that best suits the business financially, i.e. select the most cost effective alternative. The applied reference has been interpreted and applied assuming basic knowledge of one of ordinary skill in the art. See *In re Jacoby,* 135 USPQ 317 (CCPA 1962) and *In re Bode,* 193 USPQ 12 (CCPA 1977).).

27. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and machine readable storage of claims 1 and 8 of 10/730,851 to have included determining an accommodation cost, including hotel and meal charges, of accommodating the passenger until another flight offered by the airlines is available, if the accommodation cost is less than the re-booking cost offering an accommodation to said passenger, and if the re-booking cost is less than the accommodation cost, offering to re-book flights as disclosed by Ingram for the advantage of accommodating passengers in a way that provides customer satisfaction while serving the business well financially.

28. Claims 1 and 8 of the instant application therefore are not patently distinct from the 10/730,851 application and as such are unpatentable for obvious-type double patenting.

Conclusion

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the Applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Liou whose telephone number is 571-270-1359. The examiner can normally be reached on Monday - Friday, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EL

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER